

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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NATHANIEL GRAYTON,

Petitioner,

— against —

ROBERT ERCOLE, Superintendent of  
Green Haven Correctional Facility,

Respondent.  
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**TOWNES, United States District Judge:**

Before the Court is Nathaniel Grayton's ("Petitioner") application for a certificate of appealability ("COA"). For a COA to issue, Petitioner must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Petitioner need not show that he would prevail on the merits, but rather that "reasonable jurists could debate whether . . . the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Rhagi v. Artuz*, 309 F.3d 103, 106 (2d Cir. 2002).

For the reasons stated in Petitioner's Application, the Court grants a COA on the following two issues:

- (1) Whether a state defendant's exclusion from a *Geraci* hearing warrants habeas relief, and
- (2) Whether defense counsel could effectively waive a state defendant's right to be present at a *Geraci* hearing, assuming such a right exists.

The Court denies Petitioner's request for a COA on all other issues.

**SO ORDERED.**

Dated: March 12, 2010  
Brooklyn, New York

/S/  
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**SANDRA L. TOWNES**  
United States District Judge